



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 30 2009

REPLY TO THE ATTENTION OF:
LC-8J

EXPRESS MAIL AND ELECTRONIC

Mr. James Hagedorn
The Scotts Company LLC
14111 Scottslawn Road
Marysville, Ohio 43041

Re: Stop Sale, Use or Removal Order
The Scotts Company LLC, and The Scotts Company
d/b/a The Ortho Group

Dear Mr. Hagedorn:

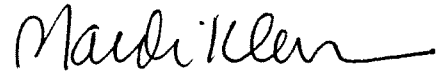
Enclosed is a Stop Sale, Use, and Removal Order (Order) from the U. S. Environmental Protection Agency concerning the pesticide product identified in this Order as "Turf Builder Plus 2 Weed Control," EPA Reg. No. 538-282. The Order shall extend to all quantities and sizes of the violative pesticide product, as described in the enclosed Order. The Order is effective immediately.

Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe that the pesticide is in violation of any provision of FIFRA or has or is intended to be distributed or sold in violation of any provision of FIFRA. EPA has reason to believe that The Scotts Company LLC have distributed or sold, and intend to continue to distribute and sell the violative pesticide product.

If you have any questions about this matter or wish to request an informal conference to discuss these alleged violations, you may contact Terence Bonace (LC-8J), Enforcement Officer, Pesticides and Toxics Compliance Section, at the above address, or by telephone at

(312) 886-3387. For any legal matters concerning this Order, please contact Jeffery Trevino (C-14J), Associate Regional Counsel, at the above address, or by telephone at (312) 886-6729.

Sincerely,

A handwritten signature in black ink, appearing to read "Mardi Klevs", with a long horizontal flourish extending to the right.

Mardi Klevs
Chief
Chemicals Management Branch

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**The Scotts Company LLC,
14111 Scottslawn Road
Marysville, Ohio 43041**

Respondent.

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**STOP SALE, USE, OR
REMOVAL ORDER**

I. Authorities

1. Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that, *inter alia*, the pesticide or device is in violation of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of FIFRA.
2. This authority has been delegated from the EPA Administrator to the Chief of the Chemicals Management Branch, Land and Chemicals Division, EPA, Region 5.

II. Background

3. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it shall be unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA.

4. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statements required in connection with their registration under Section 3 of FIFRA in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).
5. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), states that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA.
6. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See also* 40 C.F.R. § 152.15.
9. The Scotts Company is the Registrant of Record for the company number 538 assigned by EPA.
10. The Scotts Company merged into The Scotts Company, LLC.
11. The Scotts Company and The Scotts Company, LLC are “persons” within the definition of FIFRA.

12. This Order refers to the The Scotts Company and The Scotts Company, LLC and all of their divisions, offices, branches and subsidiaries, collectively, as “the Respondent.”
13. “Turf Builder Plus 2 Weed Control” (EPA Registration Number 538-282) is a “pesticide” within the meaning of FIFRA and is intended for preventing, destroying, repelling, or mitigating weeds.
14. EPA has reason to believe that Respondent have distributed or sold “Turf Builder Plus 2 Weed Control” with labeling claims that substantially differ from claims made for it as a part of the statements required in connection with its registration under Section 3 of FIFRA in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), and with composition that differs from the composition described in the statement required in connection with its registration under Section 3 of FIFRA in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(C).

III. Order

15. The Respondent is hereby ordered to **immediately** cease the distribution or sale of “Turf Builder Plus 2 Weed Control” including but not limited to all of this product’s alternate brand names and product distributed under supplemental registration agreements per 40 C.F.R. § 152.132 (collectively, the “violative pesticide products”), which are within the ownership, control, or custody of the Respondent, wherever the violative pesticide product is located.
16. The violative pesticide product shall not be sold, offered for sale, held for sale, shipped, delivered for shipment, received; or having been so received, shall not be delivered, offered for delivery, moved, or removed for disposal from any facility or establishment of the Respondent, for any reason, other than in accordance with the provisions of this Order

or such further Orders as may be issued by EPA in connection with the violative pesticide product.

17. This Order shall pertain to all quantities of Turf Builder Plus 2 Weed Control with any of the following labeling or formulation issues:

(1) on or before March 24, 2010, whose labeling does not conform either to labeling accepted by EPA on

(a) July 11, 2001 (Attachment), and to any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA before September 24, 2008; or,

(b) September 24, 2008 (Attachment), and to any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA; or,

(2) after March 24, 2010, whose labeling does not conform to labeling accepted by EPA on September 24, 2008 (Attachment), and to any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA; or,

(3) on or before March 24, 2010, whose composition does not conform either to the Confidential Statement of Formula (CSF) accepted by EPA on

(a) July 11, 2001 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA before September 24, 2008; or,

(b) September 24, 2008 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA before July 10, 2009; or,

- (c) July 10, 2009 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA; or,
- (4) on or between the dates of March 25, 2010, and January 10, 2011, whose composition does not conform either to the CSF accepted by EPA on
- (a) September 24, 2008 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA before July 10, 2009; or,
- (b) July 10, 2009 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA; or,
- (5) after January 10, 2011, whose composition does not conform to the CSF accepted by EPA on July 10, 2009 (Attachment), and to any subsequent CSF submitted to EPA and accepted by EPA.
18. Respondent may immediately begin shipping or otherwise distributing the violative pesticide products for the purpose of reformulating and relabeling and repackaging, within Respondent's registered pesticide producing establishments or registered pesticide producing establishments under contract to Respondent.
19. Respondent will relabel the violative pesticide product using only the most recent EPA label that was accepted in connection with the registration of the violative pesticide product and in accordance with any other terms and conditions set forth as part of that acceptance and any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA.
20. Respondent will reformulate the violative pesticide product using only the most recent Confidential Statement of Formula that was accepted in connection with the registration

of the violative pesticide products, or in accordance with any other Confidential Statement of Formula submitted subsequently to EPA and accepted by EPA.

21. In addition, Respondent may distribute, for the purposes of disposal, the violative pesticide products in compliance with federal, state and local laws and regulations for such disposal.
22. Respondent must retain custody of at least five unaltered and uncompromised units of each SKU of the violative pesticide product; and release those retained units into EPA custody upon EPA's request.
23. Respondent must create and maintain a daily record of the disposal of the violative pesticide product. This record must list the following information for each day, with separate entries for each location where disposal occurred on that day: 1) location of disposal, including name, address, contact person and telephone number; 2) EPA Reg. No. and SKU; and 3) number of units disposed of each SKU. Respondent must maintain this documentation for five years from each date of disposal and must produce this documentation to EPA or to state pesticide regulatory agencies upon request. Until it receives written notice from EPA to the contrary, Respondent must also provide this documentation to EPA monthly and must provide to EPA an annual summary of this documentation. Respondent must submit documents to the following person, or to such other person as EPA designates in writing:

Terry Bonace, Enforcement Officer (LC-8J)
Land and Chemicals Division
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

bonace.terence@epamail.epa.gov

24. Respondent may resume distribution and production of the violative pesticide product, provided it complies with the terms and conditions of its latest accepted label, any subsequent label changes submitted to EPA as notifications or amendments and accepted by EPA, and is produced according to the Confidential Statement of Formula accepted by the Office of Pesticide Programs, and the terms and conditions of this order.
25. Any agent, owner, or operator of the Respondent violating the terms or provisions of this Order may subject the violator to civil or criminal penalties as prescribed in Section 14 of FIFRA, 7 U.S.C. § 136l.
26. The issuance of this Order shall not constitute a waiver by EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law, to address this matter or any other matters of unlawful acts not specified in this Order.
27. This Order shall be effective IMMEDIATELY upon receipt by the Respondent.

IV. OTHER MATTERS

28. For any additional information about this Stop Sale, Use, or Removal Order, please contact Terry Bonace, Enforcement Officer at (312) 886-3387. For any legal matters concerning this Order, you are encouraged to contact, Jeffery M. Trevino, Associate Regional Counsel, at (312) 886-6729.

Mardi Klevs
Mardi Klevs
Chief
Chemicals Management Branch

7-30-09
Date